



# House of Representatives

General Assembly

**File No. 52**

February Session, 2000

House Bill No. 5539

*House of Representatives, March 10, 2000*

The Committee on Labor and Public Employees reported through REP. DONOVAN of the 84<sup>th</sup> Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

## ***An Act Concerning Notice Of Workers' Compensation Liens.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 31-293 of the general statutes is  
2 repealed and the following is substituted in lieu thereof:

3 (a) (1) When any injury for which compensation is payable under  
4 the provisions of this chapter has been sustained under circumstances  
5 creating in a person other than an employer who has complied with  
6 the requirements of subsection (b) of section 31-284, a legal liability to  
7 pay damages for the injury, the injured employee may claim  
8 compensation under the provisions of this chapter, but the payment or  
9 award of compensation shall not affect the claim or right of action of  
10 the injured employee against such person, but the injured employee  
11 may proceed at law against such person to recover damages for the  
12 injury; and any employer or the custodian of the Second Injury Fund,  
13 having paid, or having become obligated to pay, compensation under  
14 the provisions of this chapter may bring an action against such person

15 to recover any amount that [he] such employer or custodian has paid  
16 or has become obligated to pay as compensation to the injured  
17 employee.

18 (2) If the employee, the employer or the custodian of the Second  
19 Injury Fund brings an action against such person, [he] such employee,  
20 employer or custodian shall immediately notify the others, in writing,  
21 by personal presentation or by registered or certified mail, of the action  
22 and of the name of the court to which the writ is returnable, and the  
23 others may join as parties plaintiff in the action within thirty days after  
24 such notification, and, if the others fail to join as parties plaintiff, their  
25 right of action against such person shall abate. An employee of the  
26 state shall send a copy of the notice to the Commissioner of  
27 Administrative Services.

28 (3) In any case in which an employee brings an action against a  
29 party other than an employer who failed to comply with the  
30 requirements of subsection (b) of section 31-284, in accordance with the  
31 provisions of this section, and the employer is a party defendant in the  
32 action, the employer may join as a party plaintiff in the action. The  
33 bringing of any action against an employer shall not constitute notice  
34 to the employer within the meaning of this section. If the employer and  
35 the employee join as parties plaintiff in the action and any damages are  
36 recovered, the damages shall be so apportioned that the claim of the  
37 employer, as defined in this section, shall take precedence over that of  
38 the injured employee in the proceeds of the recovery, after the  
39 deduction of reasonable and necessary expenditures, including  
40 attorneys' fees, incurred by the employee in effecting the recovery. The  
41 rendition of a judgment in favor of the employee or the employer  
42 against the party shall not terminate the employer's obligation to make  
43 further compensation which the commissioner thereafter deems  
44 payable to the injured employee. If the damages, after deducting the  
45 employee's expenses as provided in this subsection, are more than  
46 sufficient to reimburse the employer, damages shall be assessed in

47 [his] the employer's favor in a sum sufficient to reimburse [him] the  
48 employer for [his] the employer's claim, and the excess shall be  
49 assessed in favor of the injured employee. No compromise with the  
50 person by either the employer or the employee shall be binding upon  
51 or affect the rights of the other, unless assented to by [him] such other.  
52 For the purposes of this section, the claim of the employer shall consist  
53 of [(1)] (A) the amount of any compensation which [he] the employer  
54 has paid on account of the injury which is the subject of the suit, and  
55 [(2)] (B) an amount equal to the present worth of any probable future  
56 payments which [he] the employer has by award become obligated to  
57 pay on account of the injury.

58 (4) The word "compensation", as used in this section, shall be  
59 construed to include incapacity payments to an injured employee,  
60 payments to the dependents of a deceased employee, sums paid out  
61 for surgical, medical and hospital services to an injured employee, the  
62 burial fee provided by subdivision (1) of subsection (a) of section 31-  
63 306, payments made under the provisions of sections 31-312 and 31-  
64 313, and payments made under the provisions of section 31-284b in the  
65 case of an action brought under this section by the employer or an  
66 action brought under this section by the employee in which the  
67 employee has alleged and been awarded such payments as damages.

68 (5) Each employee who brings an action against a party in  
69 accordance with the provisions of this subsection shall include in [his]  
70 the complaint (A) the amount of any compensation paid by the  
71 employer or the Second Injury Fund on account of the injury which is  
72 the subject of the suit and (B) the amount equal to the present worth of  
73 any probable future payments which the employer or the Second  
74 Injury Fund has, by award, become obligated to pay on account of the  
75 injury.

76 (6) Notwithstanding the provisions of this subsection, when any  
77 injury for which compensation is payable under the provisions of this

78 chapter has been sustained under circumstances creating in a person  
79 other than an employer who has complied with the requirements of  
80 subsection (b) of section 31-284, a legal liability to pay damages for the  
81 injury and the injured employee has received compensation for the  
82 injury from such employer, its workers' compensation insurance  
83 carrier or the Second Injury Fund pursuant to the provisions of this  
84 chapter, the employer, insurance carrier or Second Injury Fund shall  
85 have a lien upon any judgment received by the employee against the  
86 party or any settlement received by the employee from the party,  
87 provided the employer, insurance carrier or Second Injury Fund shall  
88 give written notice of the lien to the party and the injured employee  
89 prior to such judgment or settlement.

90 Sec. 2. Subsection (a) of section 31-301 of the general statutes is  
91 repealed and the following is substituted in lieu thereof:

92 (a) At any time within [ten] twenty days after entry of an award by  
93 the commissioner, after a decision of the commissioner upon a motion  
94 or after an order by the commissioner according to the provisions of  
95 section 31-299b, either party may appeal therefrom to the  
96 Compensation Review Board by filing in the office of the  
97 commissioner from which the award or the decision on a motion  
98 originated an appeal petition and five copies thereof. The  
99 commissioner within three days thereafter shall mail the petition and  
100 three copies thereof to the chief of the Compensation Review Board  
101 and a copy thereof to the adverse party or parties.

102 Sec. 3. Section 31-321 of the general statutes is repealed and the  
103 following is substituted in lieu thereof:

104 (a) Unless otherwise specifically provided, or unless the  
105 circumstances of the case or the rules of the commission direct  
106 otherwise, any notice required under this chapter to be served upon an  
107 employer, employee or commissioner shall be by written or printed  
108 notice, [service] served personally or by registered or certified mail

109 addressed to the person upon whom it is to be served at [his] the  
110 person's last-known residence or place of business.

111 (b) Notices [in] on behalf of a minor shall be given by or to [his] the  
112 minor's parent or guardian or, if there is no parent or guardian, then  
113 by or to such minor.

114 (c) If any attorney has filed an appearance on behalf of any person  
115 to whom a notice is required to be served under this chapter, such  
116 notice shall be served upon the attorney.

117 Sec. 4. This act shall take effect from its passage.

**LAB Committee Vote:** Yea 11 Nay 0 JF

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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### **OFA Fiscal Note**

**State Impact:** Minimal Cost and Potential Significant Revenue Gain

**Affected Agencies:** Department of Administrative Services,  
Workers' Compensation Commission

**Municipal Impact:** None

### **Explanation**

#### **State Impact:**

The passage of this bill would result in minimal costs, and could also result in potential significant revenue gain to the state.

The bill requires that state employees notify the Commissioner of the Department of Administrative Services (DAS) of a third-party lawsuit, and would allow the subrogation unit of DAS to join the lawsuit as a party and recoup any workers' compensation costs from the employee's court award or settlement. This would result in minimal additional costs to DAS, and could also result in additional revenues to the state that could be significant. The annual revenue gain is estimated at over \$1.0 million.

The bill also extends the amount of time that a Workers' Compensation Commissioner's decision can be appealed to the Compensation Review Board from 10 to 20 days. The 20-day appeal time frame is consistent with the time frame for an appeal to the

courts. This is not anticipated to result in additional costs to the Workers' Compensation Commission.

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**OLR Bill Analysis**

HB 5539

**AN ACT CONCERNING NOTICE OF WORKERS' COMPENSATION LIENS.****SUMMARY:**

This bill extends from 10 to 20 days the time to appeal a workers' compensation commissioner's award, decision, or order to the Compensation Review Board.

It makes several changes to the workers' compensation party notification rules by requiring: (1) state employees to notify the Department of Administrative Services (DAS) commissioner that they are suing a third-party; (2) employers, their workers' compensation insurance companies, and the Second Injury Fund (SIF) to notify employees of their lien on a court award or settlement; and (3) all parties to give any required notice to an attorney who has filed an appearance in a case and is representing a party to whom the notice must be given.

EFFECTIVE DATE: Upon passage

**FURTHER EXPLANATION*****DAS Notification***

The bill requires a state employee to notify the DAS commissioner that he has filed a lawsuit against a third party when (1) the third party injured him in the course of his employment and (2) the state is providing him with workers' compensation benefits. This allows the DAS commissioner to join the lawsuit as a party and recoup any workers' compensation costs from the employee's court award or settlement.

***Lien Notice***



The bill requires an employer, its insurer, and the SIF to notify an employee in writing of its lien on any court award or settlement before the award or settlement is given when the employee (1) has received workers' compensation benefits due to an injury caused by a third party and (2) has filed suit against that party. Current law requires that this notice be given only to the third party being sued.

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Report

Yea 11      Nay 0